IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6719 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KESHABHAI HAVABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6719 of 1990

MR GIRISH PATEL for Petitioner No. 1-3

MR KP RAVAL, AGP for Respondent No. 1-2

NOTICE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 10/01/2005

ORAL JUDGEMENT

In this petition under Articles 226 and 227 of the Constitution of India, the petitioners i.e. heirs

and legal representatives of Havabhai have challenged the legality and validity of the order passed by the Additional Chief Secretary, Revenue Department (Appeals), State of Gujarat dated 18.6.1990 passed in Revision Application No.17 of 1989 by which the Revisional Authority has quashed and set aside the order passed by the Collector, Mehsana on 3.10.1988 by which the possession/encroachment of the father of the petitioners came to be regularised.

2. Shri A.K.Mavlankar, Learned Advocate appearing for the petitioner has submitted that by order dated 3.10.1988, the Collector, Mehsana passed an order regularising the possession/encroachment of the land in question which was occupied by the father of the petitioners. He has also further submitted that one Vitthalbhai Babaldas Patel - respondent no.3 herein preferred revision application before the State Government without evening joining the petitioners and/or their father as party-respondents and behind the back of the petitioners, the impugned order came to be passed by the Learned Special Secretary. It is further submitted that by the judgment and order dated 18.6.1990, the order passed by the Collector, Mehsana dated 3.10.1988 which was in favour of the father of the petitioners came to be set aside. It is submitted that as neither the petitioners nor their father were served before passing the impugned order, the impugned order is in breach of principles of natural justice which requires to be quashed and set aside. It is also further submitted that in fact, the father of the petitioners i.e. original allottee in whose favour the encroachment/possession came to be regularised i.e. Havabhai has died on 4.10.1989. Under the circumstances, it is submitted that the impugned judgment and order dated 18.6.1990 be quashed and set aside.

3. Shri K.P.Raval, Learned AGP has submitted that as it was found by the Revisional Authority i.e. State Government that the order passed by the Collector, Mehsana dated 3.10.1988 is not in accordance with law and that on merits the possession/encroachment was not required to be regularised and inspite of that, the Collector passed an order which is rightly quashed and set aside by the Revisional Authority.

4. Heard the Learned Advocates for the parties.

5. It is an admitted position that by order dated 3.10.1988, the possession/encroachment by the father of the petitioners came to be regularised on certain

conditions. It is also an admitted position that the father of the petitioners i.e. Havabhai in whose favour the Collector, Mehsana passed an order has expired on 4.10.1989. Under the circumstances, it is admitted that at the time when the Revisional Authority passed an order on 18.6.1990, the father of the petitioners in whose favour the order was passed by the Collector, Mehsana dated 3.10.1988 was not alive. Nothing is on record to show that the heirs of Havabhai i.e. the petitioners were brought on record. Even it appears from the order dated 19.6.1990 that even Havabhai, father of the petitioners was not joined as party-respondent. Under the circumstances, the impugned order dated 18.6.1990 passed by the Revisional Authority is in breach of the principles of natural justice as no opportunity has been given to the petitioners and/or their father in whose favour the Collector, Mehsana passed an order dated 3.10.1988 which has been set aside by the Revisional Authority. Under the circumstances and for the reasons stated above, the impugned order passed by the State Government - Revisional Authority i.e. Special Secretary (Appeals), Revenue Department dated 18.6.1990 passed in Revision Application No.70 of 1999 is hereby quashed and set aside. It will be open for the appropriate authority to pass an appropriate order in accordance with law and on merits after giving an opportunity of hearing to the petitioners and it will be open for the petitioners at that stage to take all the objections available to them under the law. Rule is made absolute with no order as to costs.

(M.R.Shah, J)
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